

RAM CHAND BHATIA

v.

HARDYAL

JANUARY 29, 1986

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[E.S. VENKATARAMIAH AND R.B. MISRA, JJ.]

Representation of the People Act, 1951 sections 79(b) and 82(b) - Impleading a candidate as a necessary party, when arises - Corrupt practice - Ingredients of sections 123(3) and (4) - Onus of proof lies on the election petitioner - Distinction between the personal character or conduct of the candidate and his public or political character and conduct, explained.

In the 1982 Himachal Pradesh State Assembly elections the appellant Ram Chand Bhatia sponsored by Bhartiya Janata Party was declared elected defeating the next rival candidate Hardyal the respondent cum election petitioner cum official nominee of the Congress (I) Party by a margin of 3364 votes. Kanshi Ram sponsored by Janata Party secured 1049 votes while Vidhi Chand official nominee of the Communist Party of India secured 1889 votes. The respondent filed an election petition challenging the election of the appellant on the ground that Kanshi Ram, Janata Party candidate conspired with the appellant and other persons to get printed posts like the one annexed to the petition (as Annexure PA later on exhibited as PI during Trial) containing false statement of facts assailing the personal character of the election petitioner and to distribute the same during the election period with the object of prejudicially affecting the prospects of the election petitioner. The appellant contested the election petition denying the allegations made.

The learned Judge held (i) that Kanshi Ram was not a necessary party to the election petition; and (ii) that the contents of Annexure PA pertain to the personal character and conduct of the election petitioner-respondent. He found that the appellant had distributed the offending poster, but refrained from giving any finding on the question whether his election agent or any other person with his consent had distributed the said poster. As regards the printing of the offending poster, the learned Judge found that even if it was

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A not proved that the poster in question was printed at the instance of the appellant or his election agent, the offence of corrupt practice is established in view of his finding that the appellant himself had distributed the offending poster. On these findings the election petition was allowed declaring the election of the appellant as void. Hence the appeal by Special Leave.

B Allowing the appeal, the Court

C HELD : 1. The impleadment of a candidate against whom a charge of corrupt practice has been made as a party is necessary, only when the charge of corrupt practice was made against a "Candidate" as defined in section 79(b) of the Representation of the People Act, that is after he was nominated as a candidate. [191 D-F]

D 2.1 Section 123 of the Representation of People Act does not stop a man from speaking. It merely prescribes conditions which must be observed if he wants to enter Assembly or Parliament. The right to stand as a candidate and contest an election is not a common law right. It is a special right created by Statute and can only be exercised on the conditions laid down by the statute. [185 C-D]

E 2.2 In order to make out the charge of corrupt practice under sub-section 4 of section 123 of the Representation of People Act, the election petitioner has to show that (i) the impugned statement of facts was published by a candidate or his agent or by any other person with the consent of the candidate or his agent; (ii) that the statement was false and which the maker either believes to be false or does not believe to be true; (iii) that the statement relates to the personal character and not to the political character of a candidate; and (iv) that the statement was reasonably calculated to prejudice the prospects of the other candidates' election. [186 E-F, 190 G-H, 191 A-B]

G Adverse criticism however severe, however undignified, ill mannered, however regrettable it might be, in the interest of purity and decency of public life, in relation to the political views, position, reputation or action of a candidate would not bring it within the mischief of the statute. What is objectionable is a false statement of fact and not a false statement of opinion, however unfounded or unjustified. The

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public or political character of a candidate is open to public view and public criticism. If a false statement is made about the political views or his public conduct or character, the electorate would be able to judge the allegations on the merits and would not be misled by any false allegation in that behalf. It is on this theory that false statements of facts affecting public or political character of a candidate are not brought within the mischief of section 123(4). It is only when a person "beneath the politician" is sought to be assaulted that sub-section 4 of section 123 of the Act is attracted. [193 A-B, D-F]

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2.3 The burden of proof lies on the election petitioner to prove beyond reasonable doubt all the necessary facts which would establish the allegation of corrupt practices that have been alleged in the election petition. The Court does not hold such a charge proved merely on preponderance of probability. In judging whether a publication of the statement has affected the voters the Court has to ascertain whether the statement is reasonably calculated to prejudice the prospect of the candidate in an election by keeping in the forefront the electorate at the time of election. The Court has to consider the effect of impugned document on the mind of the ordinary voters who read the poster by the offending the personal character of a candidate. [185 B-C; 194 E-F]

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Devi Prasad v. Malluram Singhania & Ors. [1969] 3 S.C.C. 595 referred to.

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In the instant case; (i) the election petition contains all the necessary facts to constitute corrupt practice within the meaning of sub-sections 3 & 4 of section 123 and as such the preliminary objection as to maintainability of the election petition has been rightly overruled; (ii) the allegation of corrupt practice against Kanshi Ram was before his nomination as a "Candidate" and therefore, he was not necessary party in the election petition; (iii) from the evidence on the record (a) it cannot be said that the statement of fact in Exhibit PA assailing the personal character of the respondent was false and not true. The learned Single Judge committed to record any finding on this important aspect and he simply assumed that he had recorded a finding in the early part of the judgment. (b) The election petitioner has failed to establish the first link of the charge that the appellant had got the offending poster printed as alleged in the election petition. Rather the allegation has been belied by PW 2 Om

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A Prakash Sarotri, the election petitioner's own witness. if this important link of the charge has not been established it will be difficult to accept the allegation that the appellant, his election agent or any other person with his consent distributed the poster in public meetings at various places. Further since the appellant would not support his opponent by reading or distributing a poster which invokes to vote for a rival candidate and it has not been established that the appellant has made a common cause with the contesting candidate to start vilification campaign against the respondent the appellant cannot be held responsible for what has been done by Kanshi Ram or his brother, and the post election fact sought to be relied upon is too meagre to warrant a conclusion that appellant and Kanshi Ram were in collusion, when the latter had contested against the appellant. The mere fact that Kanshi Ram was happy over the success of the appellant or was garlanded alongwith the appellant in the victory procession cannot lead to the conclusion that they had a common cause. [198 B; 192 A-B; G; H; 195 B-C; 196 B-C; E-F; 197 H; 198 A-B]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4392 (NCE) of 1984.

From the judgment and Order dated 11.10.1984 of the Himachal Pradesh High Court in E.P. No. 7 of 1982.

E R.P. Bansal, K.C. Dua and N.N. Aggarwal for the Appellant.

T.S. Krishnamurthy Iyer, V.C. Mahajan, K.R. Nagaraja and R.S. Hegde for the Respondent.

F The Judgment of the Court was delivered by

G MISRA, J. The present appeal by special leave is directed against the judgment of the learned Single Judge of the High Court of Himachal Pradesh at Simla dated 11th October, 1984 declaring the election of the appellant as void under section 100(1)(b) of the Representation of People Act 1951 (hereinafter referred to as the Act).

H Pursuant to a Notification dated 17th of April, 1982 under sub-section (2) of section 15 of the Act calling upon all the assembly constituencies in the State to elect members of the Legislative Assembly in accordance with the Act and the rules framed therein, a number of persons filed their

nomination papers from 46 Nagrota Constituency. After scrutiny there remained only 4 contestants in the field. The appellant Shri Ram Chand Bhatia was sponsored by Bhartiya Janata Party, Shri Hardyal the respondent was the official nominee of Congress (I) Party, Shri Kanshi Ram was a Janata Party candidate and Shri Vidhi Chand was the official nominee of the Communist Party of India. The appellant was declared elected to the Himachal Pradesh Legislative Assembly by a margin of 3364 votes. Shri Hardyal the respondent was the next rival candidate. Shri Kanshi Ram, Janata Party candidate secured 1049 votes while Shri Vidhi Chand secured 1889 votes.

The respondent filed an election petition challenging the election of the appellant under section 81 of the Act on the ground that Shri Kanshi Ram, Janata Party candidate, conspired with the appellant and other persons to get printed posters like the one annexed to the said petition as Annexure PA containing false statement of facts assailing the personal character of the election petitioner Shri Hardyal and distributed the same during the election period with the object of prejudicially affecting the prospects of election of Shri Hardyal. The poster annexed to the petition as Annexure PA later on exhibited as P1 in the course of the trial of the case, is the bone of contention in the election petition. It will be relevant to extract the relevant paragraphs of the Election Petition to bring out the points involved in the case:

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3. That Shri Virendar, Advocate of Kangra, Kali Dass, Pradhan Massal Panchayat, Shri Ram Chand Bhatia, respondent, Kanshi Ram, Janata Party candidate and Shri Kidar Nath Bassi who was election incharge in the Constituency for B.J.P. joined hands amongst themselves and started a vilification campaign against the character and conduct of the petitioner. They came out with a poster like Annexure PA allegedly purported to have been published by Shri Parma Nand, brother of Shri Kanshi Ram, none the less as would be clear from the paragraphs hereinafter contained that it was the respondent who was instrument in preparing the draft as well as getting the posters printed in the name of Shri Parma Nand.

4. That these posters came out for the first time

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in the Constituency during the last week of March, 1982. However, whispering campaign assassinating character and conduct of the petitioner had started by the respondent in collusion and connivance with Shri Kanshi Ram, Janata candidate. Shri Kanshi Ram, the Janata Candidate, is the Pardhan of Gram Panchayat, Pathiar and the respondent immediately before his election, was also Pradhan of Gram Panchayat, Amtrar and both of them have close relations with each other since long time back.

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5. That the contents of the poster and facts stated therein are false to the knowledge of the respondent and the respondent does not believe these facts to be true. The bare perusal of Annexure 'PA' would show that the contents are in

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relation to the personal character and conduct of the petitioner. These statements of facts contained in Annexure 'PA' are not only published and circulated through out the constituency by the consent of the respondent but as a matter of fact these posters have been got printed and circulated by the respondent himself surreptitiously in the name of Shri Parma Nand. The contents of this poster malign the conduct of the petitioner as an M.L.A. and Minister in addition to his personal character.

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6. That the contents of the poster at Annexure 'PA' contain appeal to the voters to refrain from voting in favour of the petitioner on the ground of caste and community which has prejudicially affected the election of the petitioner.

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7. That the respondent through the contents of Annexure 'PA' has actually promoted feelings of enmity and hatred between the voters of the constituency on the grounds of caste and community with a view to prejudicially affect the election of the petitioner."

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The Election Petition thereafter refers to the various meetings held in the constituency wherein the said posters were read out and distributed by the respondent, his election agent as well as B.J.P. workers with the consent of the respondent.

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The Election Petition was contested on grounds inter alia that appellant was in no way party to bring out the poster Annexure 'PA' which clearly shows that it was issued by one Parma Nand Pathiar the brother of Shri Kanshi Ram after having got it printed at Modern Press at Nagrota; that poster like Annexure 'PA' appeared in the constituency during the last week of March when there was only a possibility that election might be held in June 1982; that respondent had no connection with Shri Kanshi Ram who in fact opposed the appellant in the election and was himself a candidate on behalf of the Janata Party; that Annexure 'PA' in no way tarnished the personal character of the election petitioner and that it only related to the political conduct of the petitioner - respondent as an M.L.A. and Minister during the period of 15 years from 1967 onwards when he was elected as an M.L.A. for the first time; that there was no appeal in the poster Annexure 'PA' that the voters should refrain from voting in favour of the respondent on the ground of caste and community and that in fact, all the contesting candidates except Shri Vidhi Chand belong to the same caste and community; that the contents of Annexure 'PA' cannot be said to promote the feelings of enmity and hatred between the voters of the constituency on the ground of caste and community. The appellant also denied calling of some of the meetings in the constituency on various dates. He also denied the printing or the publication or distribution of the poster in the constituency by him or his agent or any other person with his consent. The allegations of the parties gave rise to the following six issues:

1. Whether Shri Kanshi Ram, who was a candidate in the election, is a necessary party to the petition in view of the allegations made in paras 3, 4 and 19 of the Election Petition? If so, what is its effect? O.P.R.
2. Whether the contents of Annexure 'PA' fall within the definition of corrupt practices as defined under section 123(3), (3A) and (4) of the Representation of the People Act? O.P. Parties.
3. Whether the respondent, his agent or any other person with his consent, published or distributed himself, through his agent or any other person with his consent annexure 'PA' as alleged in the Election Petition? O.P.P.

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4. Whether the respondent, his agent or any other person, with his consent, appealed to the voters to vote in his favour and to refrain from voting in favour of the petitioner on the basis of the caste and community, as contained in the Election Petition? If so, what is its effect? O.P.P.

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5. Whether the respondent through the contents of Annexure 'PA' actually promoted feelings of enmity and hatred between the voters of the constituency on the grounds of caste and community with a view to prejudicially affect the election of the petitioner? If so, what is its effect? O.P.P.

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6. Whether the contents of Annexure 'PA' pertain to the personal character and conduct of the petitioner and were even false to the knowledge of the respondent and he did not believe the same to be true? if so what is its effect? O.P.P.

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Issue No. 1 was treated as preliminary issue at the request of the counsel for the parties. After hearing the arguments on the preliminary issue the same was decided against the appellant holding that Shri Kanshi Ram was not a necessary party to the Election Petition. The remaining issue

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Nos. 2, 3, 5 and 6 being interconnected were disposed of together. The learned Judge held that the contents of Annexure 'PA' pertain to the personal character and conduct of the petitioner. He further found that the appellant had distributed the offending poster. The learned Judge however refrained from giving any finding on the question whether his

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election agent or any other person with his consent had distributed the said poster. As regards the printing of the offending poster, the learned Judge found that even if it was not proved that the poster in question was printed at the instance of the appellant or his election agent, the offence of corrupt practice is established if it is proved that the

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appellant himself had distributed the offended poster. On these findings he allowed the Election Petition and declared the election of the appellant as void.

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The appellant feeling aggrieved by the impugned order of the learned Single Judge has approached this Court by Special leave.

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Before dealing with the points urged before us we would like to refer to the well established principle in dealing with the charge of corruption in an Election Petition. A plea in an Election Petition that a candidate or his election agent or any other person with his consent has resorted to corrupt practice raises a grave charge, proof of which results in disqualification from taking part in election of six years. The charge in its very nature must be established by clear and cogent evidence by those who seek to prove it. The court does not hold such a charge proved merely on preponderance of probability. The court requires that the conduct attributed to the offenders is proved by evidence and is established beyond reasonable doubt. Section 123 of the Representation of People Act does not stop a man from speaking. It merely prescribes conditions which must be observed if he wants to enter Assembly or Parliament. The right to stand as a candidate and contest an election is not a common law right. It is a special right created by Statute and can only be exercised on the conditions laid down by the statute. This Court in **Devi Prasad v. Malluram Singhamia and Others**, [1969] 3 S.C.C. 595, dealing with the corrupt practice observed:

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"It must be remembered that the proceedings involving proof of corrupt practices are of a quasi criminal nature and it was for the appellant to prove beyond doubt all the necessary facts which would establish the commission of the corrupt practices that have been alleged in the Election Petition."

Corrupt practice has been dealt with in section 123 of the Act. In the instant case we are concerned with corrupt practices as defined in section 123(3) and (4). It will be relevant at this stage to refer to the provisions insofar as they are relevant for the purpose of this case. The relevant provisions are quoted below :

#### Section 123(3), (3A) & (4):

"123(3): The appeal by a candidate or his agent or by any other person with the consent of a candidate or his election agent to vote or refrain from voting for any person on the ground of his religion, race, caste, community or language.....  
.....for the furtherance of the

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prospects of the election of that candidate or for prejudicially affecting the election of any candidate.....

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(3A) : The promotion of, or attempt to promote, feelings of enmity or hatred between different classes of the citizens of India on grounds of religion, race, caste, community, or language, by a candidate or his agent or any other person with the consent of a candidate or his election agent for the furtherance of the prospects of the election of the candidate or for prejudicially affecting the election of any candidate.

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(4) : The publication by a candidate or his agent or by any other person, with the consent of a candidate or his election agent of any statement of fact which is false, and which he either believes to be false or does not believe to be true, in relation to the personal character or conduct of any candidate or in relation to the candidature, or withdrawal of any candidate, being a statement reasonably calculated to prejudice the prospects of that candidate's election."

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The respondent had to satisfy the conditions contemplated in sub-section (3) and (4) of section 123 to bring home his charge of corrupt practice against the appellant. As the charge of corrupt practice amounts to a criminal charge, it has to be dealt with like a quasi-criminal proceedings. As the fate of this appeal hinges upon the contents of the offended poster, it will be appropriate at this stage to extract the contents. An English translation of the contents of the document is given below:

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#### NOTICE

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(One has one's own view-point)

Fifteen years' 20-Point programme of Shri Hardyal Ji and reply thereto by Parmanand, keeping in view janata Party candidate Chaudhary Kanshi Ram (Ex-serviceman), Pathiar.

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1. Like Hardyalji I will never say that I have Raj-Yog on my forehead (destined to rule) and I have not acquired this position because of your votes.

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2. Like Hardyalji I will also not say that the children of Harijans and Ghirth community do not have brains, so I do not employ them in my office. I will rather establish the fact that even the children of Harijans and Ghirths have brains and given opportunity they can also work like the children of others.

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3. While Shri Hardyalji was Forest Minister, 1700 boys were employed in Dhaulandhar Project and 300 boys were recruited as Forest Guards. Besides, boys were also employed in Transport, Electricity, Agriculture, Hospital and as Patwaris. We want to ask it from Sh. Hardyal as to how many boys have been employed from Nagrota constituency.

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4. As Forest Minister, Mr. Hardyal has discontinued 'Chuharam' of the forest and eliminated the income of village Panchayats. Why so?

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5. We want to ask it from Mr. Hardyal as to how many persons of Nagrota constituency have been appointed as Gazetted Officers during his 15 years' tenure as M.L.A. and Minister.

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6. Had Mr. Hardyal provided employment to 5 boys per Panchayat per year during his 15 years' tenure as M.L.A. and Minister, two thousand children of Nagrota constituency would have been employed by now and there would have been no unemployment in Nagrota area.

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7. Every party while in power will construct roads, dispensaries, bridges and schools in villages because there is provision for such things in the constitution. Mr. Hardyal is misleading the innocent village folks by saying that he had done all that. This is all false.

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8. I want to ask it from the people of Nagrota that an outsider has been befooling the people for 15 years on the plea of 'Raj Yog' and even in the capacity of MLA he has been living outside the area of Nagrota in a splendid house worth Rs.2 lacs at Darhi and thus grinding his own axe. Why so?

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9. May I ask if Chaudhary Hardyal being a Ghirth MLA could not find place to stay in the house of some Ghirth or the person of any other community? For the last 15 years we have been seeing him staying alongwith his car with green flag at the house of one Amirzada (Aristocrat), Seth Saran Dass who is the duplicate of Mr. Hardyal at Nagrota. Seth Saran Dass.

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10. I am a son of a farmer and labourer. What are the difficulties of farmers and labourers, I will manage to get them removed by the Govt.

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11. Like Hardyalji I will not try to deceive any one. If anobody's work would be worth doing I shall definitely do that and if that may not be possible for me to do I will tell that the work cannot be done.

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12. I will never stay at the house of Seth Saran Dass rather I would go to the house of some poor man and will help him minimise his sufferings.

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13. Like Hardyalji I will not go to the house of a poor at the time when he is dead. I will go to the house of poor, arrange, for his medical treatment, provide him with medical treatment, provide him with medical aid in hospital and will get the money arranged. But I will not do like Hardyalji who visited the house of late Bararu Ram very poor person of Mauza Sarialakkhar, Tansutra Tikka Pathiar, who died without medical aid on the day of Kappar Dhulai and participated in the meals of shok Saradhi in order to befool the people.

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14. Like Hardyalji I will also not visit the people on the occasion of marriages etc. If I visit such places in my capacity as an M.L.A. then naturally

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40/50 other persons will also gather there and that will add to the expenses of the persons celebrating the marriage. But, of course, if someone invites me before marriage I will go there and will help him in making up the deficiency, if any.

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15. I will never try to befool the poor people as Mr. Hardyal has deceived a very poor old man. Five years ago an old man gave an application to Mr. Hardyal to the effect that he was a very poor man and his son was a matriculate and that Mr. Hardyal should help in providing a job to the boy. Three years thereafter that boy died. When the time to seek votes came, Mr. Hardyal put his hand on the shoulders of the old man and said that he was arranging for the immediate arrival of the appointment orders of his son.

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16. Interviews for the posts of Patwaris were held on 30.1.1982 at Dharamsala. Interview cards were issued to 125 boys of every Tehsil, that is to say that 500 boys were called for interview from 4 Tehsils, but only 7 cards were issued to the boys of Nagrota constituency. Mr. Hardyal has got it done deliberately because Mr. Hardyal wanted that the seats in the share of Nagrota constituency should go to Pt. Sant Ram and Sat Mahajan.

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17. Panchayat Sangathan of Nagrota Block had passed a resolution 2-1/2 years back that Bador should be made a Sub Tehsil. During the Janata regime, Shanta Kumarji had ordered to establish Sub Tehsils at Kundia, Baijnath, Fatehpur (Nurpur), Bangana (Una), Amb (Una), Badoh (Nagrota), Kotkhal etc. All other Sub Tehsils have since been established but the establishment of Badoh Sub Tehsil was withheld by Mr. Hardyal with the view that he may inaugurate its inception when the elections are near and thus mislead the innocent village folks that he has established the Sub Tehsil.

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18. On 18th January, 1981 Ghirth Mahasabha had demanded from the Centre to open recruiting offices of Air Force and Navy at Nagrota but Chaudhary Hardyal had flatly refused to support this demand. Why so?

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19. Chaudhary Hardyal has flatly refused to support the demands pertaining to the quota of Backward classes but he managed to obtain admission in the medical college for his son against a seat of backward classes. Why so?

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20. 15 years ago Mr. Hardyal was the President of the Jan Sangh Group of the Tea Garden Trade Union, and joined the Congress after shifting his loyalty. It is for this reason that he does not help the village people to secure the employment. He helps only the children of rich people, that too outsiders. The lands have been given to the tenants on the basis of the provisions of the Constitution of India. Mr. Hardyal has been misleading the innocent people saying that it is he who has provided them with lands. It is all false. I earnestly wish the success of Janata Party candidate Mr. Kanshi Ram through your all possible efforts.

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Parma Nand  
R/o Pathiar Halqa  
Nagrota, Bagwan.

Modern Press, Nagrota

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So far as a charge of corrupt practice within the meaning of sub-section (3) of section 123 is concerned there is not much difficulty. The appellant and respondent both belong to the same caste and community and the contents of the offending poster does not indicate that the voters were asked to refrain from voting in favour of the respondent on the ground of caste. All that it contains is that although respondent belongs to the same community he has got scant regard for his caste and community people. This can hardly mean that the poster incites the voters who were mostly of the same community from refraining from voting in favour of the respondent on the ground of caste & community. The real difficulty arises with regard to the charge of corruption as defined in sub-section (4) of section 123. In order to make out the charge of corruption under sub-section (4), the election petitioner has to show that (1) the impugned statement of facts was published by a candidate or his agent or by any other person with the consent of the candidate or

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his agent (ii) that the statement was false and which the maker either believes to be false or does not believe to be true (iii) that the statement relates to the personal character of a candidate and (iv) that the statement was reasonably calculated to prejudice the prospects of the other candidates' election. All the aforesaid ingredients had to be established before an election petitioner can succeed on the charge of corrupt practice.

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Now we proceed to deal with the points raised on behalf of the parties. The first contention raised by the learned counsel for the appellant is that the Election Petition was liable to be dismissed in view of section 82 (b) of the Act for not impleading Kanshi Ram who was a contesting candidate and against whom allegations of corrupt practice had been made. The learned Single Judge however overruled this objection on the ground that the allegation of corrupt practice, if any, made against Kanshi Ram pertained to a period prior to his becoming a candidate and as such it will not attract section 82 (b) of the Act. The impleadment of a candidate against whom a charge of corrupt practice has been made, as a party is necessary only when the charge of corrupt practice was made against a candidate. Section 79 (b) of the Act defines 'candidate'. It reads as under:

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"79 (b): 'candidate' means a person who has been or claims to have been duly nominated as a candidate at any election."

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The position was however different before the Election Law Amendment in 1975 and the definition of a candidate as provided in section 79 (b) prior to its Amendment in 1975 was as under:

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"79 (b): 'candidate' means a person who has been or claims to have been duly nominated as a candidate at any election and any such person shall be deemed to have been a candidate as from the time when, with the election in prospect, he began to hold himself out as a prospective candidate."

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Unless the allegations made against Kanshi Ram about corrupt practice were at a time when he was nominated as a candidate, clause (b) of section 82 is not attracted.

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The next contention raised on behalf of the learned counsel for the appellant is that the necessary allegations which would satisfy the requirement of sub section (4) of section 123 have not been made and therefore the Election Petition was liable to be dismissed on this score alone. We have perused the Election Petition and in our opinion all the necessary facts to constitute a corrupt practice within the meaning of sub section (4) have been made out and the Election Petition cannot be dismissed on this ground.

This leads us to the important question as to whether the ingredients of sub-section (4) of section 123 had been satisfied in the instant case to make out a charge of corrupt practice. One of the ingredients of sub-section (4) of section 123 is that the statement of the offending document must be false and the person making it either believes it to be false or does not believe it to be true in relation to the personal character or conduct of the candidate. The learned Judge has observed in the judgment as follows:

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"I have already concluded that the posters like P.1 contain statements of facts which are false and not believed to be true by the respondent, in relation to the personal character and conduct of the petitioner."

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On a perusal of the judgment we find no such finding recorded by the learned Judge in the earlier part of his judgment. This appears to be under some misapprehension. The learned Judge has referred to the contents of the impugned poster but the court has got to record its own finding whether the statements of facts about the personal character of the respondent was false to the knowledge of the appellant or in any case believed by him to be false and not true. In the absence of a finding on this requirement of sub-section (4), the appellant could not be held to have committed a corrupt practice within the meaning of section 123(4) of the Act. The learned Judge, in our opinion, was not justified by assuming that he had already recorded a finding on this aspect.

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The next question for consideration is whether the contents of the impugned document attack the personal character of the respondent or only the political character of the respondent. The requirement of sub-section (4) of section 123 is that the content of the impugned document should relate

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to the personal character and not to the political character. The law is well settled. Adverse criticism however severe, however undignified, ill mannered, however regrettable it might be, in the interest of purity and decency of public life, in relation to the political views, position, reputation or action of a candidate would not bring it within the mischief of the statute. What is objectionable is a false statement of fact and not a false statement of opinion however, unfounded or unjustified.

A distinction has been drawn between the personal character or conduct of the candidate and his public or political character and conduct. Law postulates that if a false statement is made in regard to the public or political character of the candidate it would not constitute a corrupt practice even if it is likely to prejudice the prospects of that candidate's election. The public or political character of a candidate is open to public view and public criticism. If a false statement is made about the political views or his public conduct or character, the electorate would be able to judge the allegations on the merits and could not be misled by any false allegation in that behalf. It is on this theory that false statements of facts affecting public or political character of a candidate are not brought within the mischief of section 123(4). The courts have taken the view that it is only when a person 'beneath the politician' is sought to be assaulted that sub-section (4) of section 123 of the Act is attracted. In some border line cases difficulty arises to find out whether the assault is on the person 'beneath the politician' that is on the personal character and conduct of a man or on his political opinion and conduct. It will depend on the facts of each case whether in the particular given case the assault is on the personal character and conduct of the candidate or on his political conduct.

In the instant case the contents of the impugned poster have been set out above. The respondent has been either an M.L.A. or a Minister for the 15 years and most of the allegations relate to his achievements or failures as an M.L.A. or as a Forest Minister. Points 1 to 14 of the impugned document which have already been quoted in extenso in the earlier part of the Judgment dealing with the political failures of the respondent. Except paragraph 15 of the offending poster other paragraphs deal with the political character and conduct of the respondent. Paragraph 15 reads as follows:

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"I will never try to befool the poor people as Mr. Hardyal has deceived a very poor old man. Five years ago an old man gave an application to Mr. Hardyal to the effect that he was a very poor man and his son was a matriculate and that Mr. Hardyal should help in providing a job to the boy. Three years thereafter that boy died. When the time to seek votes came, Mr. Hardyal put his hand on the shoulders of the old man and said that he was arranging for the immediate arrival of the appointment orders of his son."

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This also relates to the failure of the respondent in getting a job for the son of the old man in spite of his assurances for the same. He continued to give the assurance even though the son of the old man had died. It only indicates that there was no touch of sincerity in the assurances of the respondent either as M.L.A. or as a minister. It, however, may be said that the contents of this paragraph also malign the personal character and conduct of the respondent. All other paragraphs deal with the political failures or political opinion of the respondent.

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The electorate at the time of election has to be kept in the forefront in judging whether a publication of the statement has affected the voters. The court has to ascertain whether the statement is reasonably calculated to prejudice the prospect of the candidate in an election. It would be unrealistic to ignore that when appeals are made by the candidate there is an element of partisan feeling and there is extravagance of expression in attacking one another and the court has to consider the effect of the impugned document on the mind of the ordinary voters who read the poster.

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Even assuming for the sake of argument that some of the paragraphs of the offending poster assail the personal character of the respondent, the charge of corrupt practice within the meaning of sub-section (4) of section 123 cannot be made home unless it was further established that the impugned statement of fact is false and the candidate either believed that statement to be false and not believe it to be true. We have already found that the learned Judge has not recorded any categorical finding on this aspect and he erroneously assumed that he had already recorded a finding. On the evidence on the record we can't say that the statement of fact assailing the personal character of the respondent was false or at any rate believed by the appellant to be false and not true.

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A Shri Krishna Murti Iyer for the respondent strenuously contended that even if it is found that the appellant was not responsible for the printing of the poster still if the charge of publishing and distributing the offending poster by the appellant or his election agent or by any other person with his consent is established the appellant will not be out of the wood.

B The allegation made in the Election Petition is that the appellant was responsible for the printing of the offending poster and also for publishing and distributing the same in various meetings. The first link of the offending document that it was printed at the instance of the appellant has not been established at all. Rather the evidence of P.W. 2 Shri Om Prakash Sarotri runs counter to the allegation. In his deposition he said :

C "I have brought the manuscript of the poster. On 3rd March, 1982 the manuscript of the posters like Ex.P.1 was given to me for printing by Shri Kanshi Ram Chaudhary, Pradhan of Pathiar Panchayat. .... When I asked Shri Kanshi Ram as to why he did not mention his own name in the poster, he told me that Shri Parma Nand is his elder brother and the poster is to be issued in his name. .... I asked for making some payment in advance for printing the posters. Shri Kanshi Ram paid me a sum of Rs. 125 as advance. .... I delivered 3000 posters to Shri Kanshi Ram who was accompanied by some persons and he paid me the balance amount of Rs. 225 on that day. I had issued a receipt in token of the receipt of the amount to Shri Kanshi Ram in the name of Shri Parma Nand."

E In cross examination he admitted that :

G "There were two or three persons accompanying Shri Kanshi Ram but the respondent was not seen by me."

H The respondent in the Election Petition was the present appellant. Therefore on the statement of the witness of the respondent-election petitioner, the order was placed by Kanshi Ram Chaudhary, the brother of the respondent. On the offending

A poster election symbol of the Janata Party i.e. a farmer with a plough on his shoulder within a wheel (Haldhar) was shown on the top of the poster soliciting vote for Janata Party candidate, Shri Kanshi Ram. In the end it solicited vote for Shri Kanshi Ram, Janata Party candidate. The Modern Press Nagrote, Bagwan was shown as the printer of the poster. It also showed Shri Patmanand, resident of Pathiar, Halqua Nagrote (Bagwan) as the publisher of the poster. Such a poster on the face of it could not have been issued by the appellant through Parmanand who was admittedly the cousin of Shri Kanshi Ram in whose favour the said poster was taken out. Neither the name of the appellant nor his party was anywhere mentioned in the said poster.

B The learned Judge rest content only by observing that the respondent may have some connection with the printing. But in our opinion on the statement of P.W.2 itself the allegation about the printing of the poster at the instance of the appellant is belied. The learned Judge however was of the opinion that even if the respondent has failed to establish that the appellant was responsible for the printing of the poster, he could still be held up for the charge of corrupt practice if he or his election agent or persons with his consent had distributed the poster in various meetings.

C The learned Judge has recorded a finding that the appellant himself had distributed the offending document in various meetings. He however, as stated earlier, refrained from giving any finding as to whether his election agent or other persons with his consent had distributed the offending document.

D In our opinion it does not stand to reason that a poster which was issued at the instance of Janata Party, which contained the symbol of the Janata Party, invoking the voters to vote for Kanshi Ram the rival candidate would be distributed in the meetings by the appellant. Kanshi Ram was a candidate opposing the appellant.

E The learned Judge has simply given the synopsis of 24 witnesses produced on behalf of the election petitioner and 17 witnesses on behalf of the appellant. But there is absolutely no discussion of the evidence. The court has to give reason why it believes a particular witness and discards the other. But there is absolutely no discussion and it appears to be mere his ip se dixit to rely on the statement of P.W.17 Shri Kedar Nath Bassi, P.W.19 Nek Ram, P.W.20 Gian Chand produced on behalf of the respondent. The learned Judge also relied upon the alleged admission of Jaishi Ram R.W.4 that Ramchand

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Bhatia had distributed the offending poster on various dates. Curiously enough there is no such admission in the statement in chief or cross examination of R.W.4. There appears to be misreading of the deposition of R.W.4. It must be remembered that the election proceedings involving charge of corrupt practice are of quasi criminal nature and it was for the election petitioner to prove beyond reasonable doubt all the necessary facts which would establish the allegation of corrupt practice that have been alleged in the Election Petition. The respondent has failed to establish the link that the appellant was responsible for the printing of the offending poster. If the important link of the charge is not established it will be difficult to accept the succeeding link that respondent or his agent or person with his consent distributed the offending poster in the various meetings. It would be unsafe to accept the oral evidence on its face value without seeking for assurance from some other circumstances speak for themselves. The appellant would never support his opponent by reading or distributing a poster which invokes to vote for a rival candidate. It is true that paragraph 3 of the Election Petition does allege that Shri Virender, Advocate of Kangra, Kali Dass, Pradhan Massal Panchayat, Shri Ram Chand Bhatia, respondent, Kanshi Ram, Janata Party candidate and Shri Kidar Nath Bassi who was election incharge in the constituency for B.J.P. joined hands amongst themselves and started a villification campaign against the character and conduct of the petitioner. The allegations have been more easily made than made out. Unless it is established that respondent has also made a common cause with the contesting candidate to start villification campaign against the respondent, the appellant cannot be held responsible for what has been done by Kanshi Ram or his brother.

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The learned Judge has laid undue emphasis on the post election facts and circumstances to prove that the appellant made a common cause with Shri Kanshi Ram in assailing the personal character of the respondent. It is true that there is evidence of Kedar Nath Bassi P.W.17 that Kanshi Ram had participated in the victory procession of the appellant and he was also garlanded and seemed to be happy. But in our opinion the subsequent facts sought to be relied upon is too meagre to warrant a conclusion that appellant and Kanshi Ram was in collusion, when Kanshi Ram had contested against the appellant and had polled 1049 votes. It all depends upon the attitude of a person. Some take election result too seriously and some

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take in it sportsman's spirit. Have we not seen that in a game even the defeated party says huray to the winning party? It is all in the game. Therefore the mere fact that the Kanshi Ram was happy or was garlanded will not lead to the irresistible conclusion that the appellant and respondent had a common cause.

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In the result all the requirements of sub-section (4) of section 123 have not been satisfied in this case and the learned Judge, in our opinion, has committed a grave error in setting aside the election of the appellant. We therefore allow the appeal and set aside the judgment and order of the learned Single Judge dated 11th October, 1984 and dismiss the Election Petition. There is, however, no order as to costs.

S.R.

Appeal allowed.